IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

CRL.A.No. 826 of 2000(B)

CC.412/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHENGANNUR
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APPELLANT: COMPLAINANT

JOHN THOMAS,
MADATHILPUTHANPURAYIL (H),
ALA MURI, ALA VILLAGE,
ALA P.O., CHENGANNOOR.

BY ADV. SRI.P.K.BEHANAN

RESPONDENT: ACCUSSED
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1. P.SREEKUMAR, MANAGER,
THE PRIMARY CO- OPERATIVE,
AGRICULTURAL DEVELOPMENT BANK LTD.,
NO.A 159, THIRUVALLA, MALLAPPALLY.

2. DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT , ERNAKULAM.

BY ADV. SRI.S.HARIKRISHNAN
PUBLIC PROSECUTOR SRI.DILIP S.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.826 of 2000

Dated this the 11th day of July, 2007

JUDGMENT

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act on the allegation that the accused issued the impugned cheque for Rs.1,60,000/- dated 10.7.1998 towards the discharge of liabilities and that on presenting the cheque the same was returned for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount paid.

2. The evidence adduced in the matter consisted the testimony of PW1, the complainant and Exts. P1 to P8.

3. The trial court acquitted the accused only on the ground that the cheque was issued as security towards the debt and hence, it cannot be treated as the cheque issued towards the discharge of the liability. Evidently, the same is no longer the correct proposition of law in view of the decision of the Supreme Court in **I.C.D.S. Ltd. vs. Beena Shabeer (2002 (3) KLT 218)**. The court was relied on the version of PW1 brought out in the

cross examination that it is after signing the cheque the amount was given. I find that the above sequence has no relevance as the cheque was issued towards the liability incurred immediately after signing the cheque. On the basis of the above answer brought out in the cross examination, it cannot be held that the cheque was issued not towards the discharge of the liability. Further, the accused has not sent reply notice on receipt of the notice demanding payment nor was any evidence adduced to rebut the statutory presumptions. As the version of PW1 do establish the fact that the cheque was executed and the documents produced revealed that there was no sufficient amount in the account of the accused to honour the cheque.

4. The counsel for the respondent/accused has sought for an opportunity for him to further adduce evidence before the trial court. I find that there is no case that the accused was not afforded sufficient opportunity to adduce evidence in the matter. In the circumstances, I find that the request for getting the matter remitted is only to protract the proceedings and is liable to be rejected.

5. In the circumstances, I find that the complainant has proved beyond reasonable doubt that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act. The finding of the court below is set aside. The accused is convicted and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.1,60,000/- to the complainant and in default, to undergo simple imprisonment for three months. The revision petitioner is granted four months' time to pay the amount of compensation. He shall appear before the Judicial First Class Magistrate Court-II, Chengannur on 12.11.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl